Inherent.Com v. Martindale-Hubbell et al Doc. 3

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REED ELSEVIER, INC.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

INHERENT.COM aka INHERENT, Plaintiff, v. MARTINDALE-HUBBELL, LEXIS/NEXIS INC. and DOES 1 through 200 inclusive, Defendants.	C No. 05 3515 **NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING PURSUANT TO LOCAL RULE 3-13** Complaint Filed: July 29, 2005

Pursuant to Civil Local Rule 3-13, defendants Martindale-Hubbell and Lexis/Nexis, divisions of Reed Elsevier, Inc. (collectively "Reed"), hereby provide the following notice:

1. There is another action pending in the United States District Court for the District of New Jersey involving the same parties and the same facts as the present action, arising from a state court complaint filed by Reed in the New Jersey state court prior to the underlying state court complaint filed in present action.

2. On July 18, 2005, Reed filed a state court action against Inherent.com Inc. aka Inherent, Inc. (collectively, "Inherent") in the state Superior Court of New Jersey, Union County, entitled Reed Elsevier, Inc. v. Inherent.com, Inc. a/k/a Inherent, Inc. (Docket No. UNN-L-2583 05) (the "New Jersey Action"). The New Jersey Action seeks declaratory relief against Inherent and

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among other things, alleges that Reed's division, Martindale-Hubbell ("MH") which has its principal office in New Jersey, entered into discussions with Inherent about a possible business relationship in 2004-2005. The New Jersey Action alleges that, on or about June 15, 2005, Reed and Inherent, executed a written non-binding indication of interest letter dated June 8, 2005 to explore a possible acquisition by Reed or its affiliate of certain assets of Inherent ("Non-binding Letter of Interest"). The Non-binding Letter of Interest provided that Reed would be entitled to perform its due diligence of Inherent following execution of the Non-binding Letter of Interest, and that the Non-binding Letter of Interest "creat[ed] no legally binding obligation on the part of the parties to conclude the proposed transaction,...notwithstanding any subsequent actions or communications, written or oral, between the parties....". After engaging in due diligence following the execution of the Non-binding Letter of Interest, Reed decided not to proceed with any acquisition, and notified Inherent that it would not move forward with any possible transaction on June 28, 2005, less than two weeks after the Non-binding Letter of Interest was signed. Thereafter, on July 18, 2005, Reed filed the New Jersey Action in the Superior Court of New Jersey for Union County against Inherent for declaratory relief.

3. On or about August 15, 2005, Inherent, filed a Notice of Removal of Action Under 28 U.S.C. Section 1441(b) and removed the New Jersey Action to the United States District Court for the District of New Jersey, Docket No. 258305. The New Jersey Action remains pending in United States District Court for the District of New Jersey.

4. On July 29, 2005, after Reed had filed its New Jersey Action, Inherent filed a complaint in the Superior Court in the County of San Francisco against Reed's divisions, MH, and Lexis/Nexis, entitled Inherent.com aka Inherent v. Martindale-Hubbell, Lexis/Nexis, Inc., Case No. CGC 05443573, for declaratory relief, breach of contract and fraud, alleging that MH and Lexis/Nexis, breached an alleged agreement to purchase Inherent, among other things (the "Later-filed California State Court Action"). Inherent's Later-filed California State Court Action arises from the same facts, involves the same parties, and seeks some of the same type of relief as the alleged in New Jersey Action. On August 30, 2005, and filed concurrently herewith, Reed filed a Notice of Removal of Action Pursuant to 28 U.S.C. § 1441(b) to remove the Later-filed California

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State Court Action to the United States District Court for the Northern District of California, San Francisco Division.

5. Reed intends to file to motion to change venue of the present action pursuant to 28 U.S.C. § 1404(a) because, among other things, the New Jersey Action was filed prior to the Later-filed California State Court, and it would be in the interests of justice, judicial efficiency, and the convenience of witnesses, to transfer the present action to the United States District Court for the District of New Jersey, and/or a motion to dismiss pursuant to the Federal Rule of Civil Procedure for failure to properly plead a claim upon which relief can be granted.

DATED: August 30, 2005

SHARTSIS FRIESE LLP

By ______________________
ZESARA C. CHAN

Attorneys for Defendants
MARTINDALE-HUBBELL AND LEXIS/NEXIS, divisions of REED ELSEVIER, INC.

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PROOF OF SERVICE

I, **Cheryl McInerney**, declare:

1. I am employed in the City and County of San Francisco, California by Shartsis Friese LLP at One Maritime Plaza, 18th Floor, San Francisco, California 94111.

2. I am over the age of eighteen years and am not a party to the within cause.

3. I am readily familiar with Shartsis Friese LLP's practice for collection and processing of correspondence and documents for mailing with the United States Postal Service, which in the normal course of business provides for the deposit of all correspondence and documents with the United States Postal Service on the same day they are collected and processed for mailing.

4. On August 30, 2005, at Shartsis Friese LLP located at the above-referenced address, I served the attached NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING PURSUANT TO LOCAL RULE 3-13 on the interested parties in said cause by

_x_ personal delivery by messenger service of the document(s) above to the person(s) at the address(es) set forth below:

___ placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in accordance with the firm's practice of collection and processing correspondence for mailing to the person(s) at the address(es) set forth below:

___ facsimile transmission pursuant to Rule 2008 of the California Rules of Court on this date before 5:00 p.m. (PST) of the document(s) listed above from sending facsimile machine main telephone number (415) 421-2922, and which transmission was reported as complete and without error (copy of which is attached), to facsimile number(s) set forth below:

Patrick E. Catalano, Esq.
781 Beach St., #333
San Francisco, CA 94109-1245
Tel: (415) 788-0207
Fax: (415) 477-0066

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 30, 2005 in San Francisco, California.

Cheryl McInerney
CHERYL McINERNEY

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